

**MEMORANDUM OF AGREEMENT
AMONG
FEDERAL HIGHWAY ADMINISTRATION,
OKLAHOMA DEPARTMENT OF TRANSPORTATION, AND
OKLAHOMA STATE HISTORIC PRESERVATION OFFICE,
REGARDING
THE REPLACEMENT OF COUNTY ROAD NS-3768 BRIDGE OVER
CANEY RIVER**

WHEREAS, the Oklahoma Department of Transportation (ODOT) and Osage County plan to replace the existing bridge carrying County Road NS-3768 in Osage County, Oklahoma, a property eligible for inclusion on the National Register of Historic Places (NRHP), by constructing a new bridge on a new alignment that runs parallel to the existing bridge; and

WHEREAS, the Federal Highway Administration (FHWA) plans to fund the Project, thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. 300101 et seq.), and its implementing regulations, 36 CFR Part 800; and

WHEREAS, FHWA has determined that the Federal-Aid Project STP-257C(042)CI, State Job J/P 30499(04) will have an adverse effect to the Parker-thru truss over the Caney River (ODOT Structure 57N3768E0010006; NBI 10963), a property eligible for listing on the National Register of Historic Places, and has consulted with the Oklahoma State Historic Preservation Officer (SHPO), pursuant to 36 CFR Part 800; and

WHEREAS, in accordance with 36 CFR § 800.3(f), ODOT and FHWA identified Preservation Oklahoma and Oklahoma Historic Bridge and Highway Group as a consulting party; and

WHEREAS, FHWA has consulted with the Kaw Nation, Osage Nation, Pawnee Nation, United Keetoowah Band of Cherokees, and the Wichita and Affiliated Tribes, in accordance with 36 CFR § 800.2(c)(2), and determined that no properties of traditional religious cultural significance will be affected by the undertaking; and

WHEREAS, in accordance with 23 USC § 144(n)(4), ODOT made the bridge available for donation, and Osage County has agreed to retain the bridge in place; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iv) as a signatory to this MOA; and

NOW, THEREFORE, FHWA, Oklahoma Department of Transportation, and the Oklahoma SHPO, agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

FHWA will ensure that the following measures are carried out. Measures will be met within the timeframes presented for each stipulation.

- I. **Documentation.** The subject bridge was determined eligible for listing on the NRHP in 2007. Prior to the construction of the new bridge, ODOT will record the existing bridge at the equivalent of Level II documentation as specified by the Historic American Engineering Record (HAER).
 - A. High Quality black and white photographs, of the bridge documenting its present appearance and major structural or decorative details, together with all negatives on archival gold CD as digital TIFF files that meet or exceed the minimum requirement for pixel depth. The photographs will be a minimum 4" x 6" and no larger than 8" x 10", and will be clearly labeled with the following information:
 - a. Name of property;
 - b. Location (county, city, state, and street address);
 - c. Name of photographer;
 - d. Date of photograph;
 - e. Location of photographic negative;
 - f. Indication of direction camera is pointing; and
 - g. Number of photograph in series.

Photographs are to be submitted by ODOT and approved by SHPO as meeting the conditions outlined above before any work takes place that will affect the property.
 - B. Photographic reproduction of selected original (as-built) construction plans and historic photographs, if they exist.
 - C. Preparation of a brief written technical description of the bridge and historical summary.
 - D. All documentation will be edited, catalogued and packaged in a manner acceptable to the Oklahoma SHPO. The Oklahoma SHPO will be the repository for the documentation.
 - E. Within three years of the execution of this MOA, ODOT will provide all research documentation, research materials, copies of photographs, and HAER documentation of the bridge to the Oklahoma SHPO.
- II. **Adoption and Relocation.** In accordance with 23 USC 144(n)(4), ODOT will donate the historic bridge to Osage County. Pursuant to the Osage County Resolution, dated May 26, 2015 (Attachment A), Osage County will retain the historic bridge in place unless and until the bridge becomes a safety issue, is in danger

of collapse, or constitutes a concern for other environmental issues. Should the bridge become a safety issue, become in danger of collapse, or constitute a concern for other environmental issues, Osage County will notify the Oklahoma Department of Transportation of its intent to remove the bridge and provide adequate documentation of the problems for which the bridge requires removal.

- III. **Duration.** This MOA will be null and void if its stipulations are not carried out within ten (10) years from the date of its execution. At such time, and prior to work continuing on the undertaking, FHWA shall either (a) execute a MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below. FHWA shall notify the signatories as to the course of action it will pursue.
- IV. **Post-Review Discoveries.** If historic properties are discovered or unanticipated effects on historic properties found, FHWA shall follow ODOT Specification 107.09, Protection of Archeological and Unmarked Human Burial Sites and 36 CFR § 800.13 Post-review discoveries.
- V. **Dispute Resolution.** Should any signatory party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:
 - A. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
 - B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
 - C. FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
- VI. **Amendments.** This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed

by all of the signatories is filed with the ACHP.

- VII. **Termination.** If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

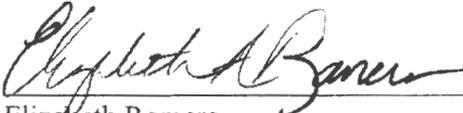
Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by FHWA and SHPO and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

Signatory

MOA Job/Piece 30499(04) County Road NS-3768 over the Caney River in Osage County,
Oklahoma (Structure 57N3768E0010006; NBI 10963)

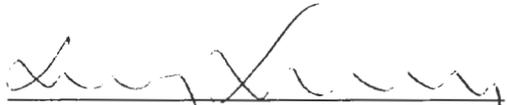
FEDERAL HIGHWAY ADMINISTRATION

BY:  DATE: 2/17/14
Elizabeth Romero
Program Development Team Leader
Oklahoma Division

Signatory

**MOA Job/Piece 30499(04) County Road NS-3768 over the Caney River in Osage County,
Oklahoma (Structure 57N3768E0010006; NBI 10963)**

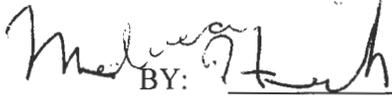
OKLAHOMA DEPARTMENT OF TRANSPORTATION

BY:  DATE: 2/16/16
Siv Sundaram, P.E.
Environmental Programs Assistant Division Engineer

Signatory

**MOA Job/Piece 30499(04) County Road NS-3768 over the Caney River in Osage County,
Oklahoma (Structure 57N3768E0010006; NBI 10963)**

OKLAHOMA STATE HISTORIC PRESERVATION OFFICER



BY: _____

DATE: _____

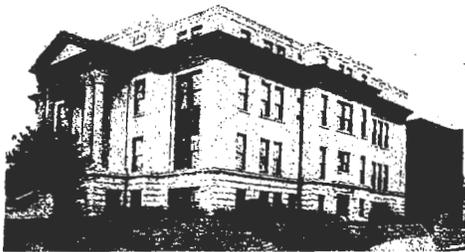
2/12/16

Melvena Heisch

Deputy State Historic Preservation Officer

APPENDIX A

**Resolution 15-18; Board of Johnston County Commissioners
for Retention of Structure 57N3768E0010006; NBI 10963 in Place as a Monument**



OSAGE COUNTY COMMISSIONERS
P.O. BOX 87
PAWHUSKA, OKLAHOMA 74056

COMMISSIONERS:
BOB JACKSON
918-287-1570
1ST DISTRICT, PAWHUSKA
SCOTT HILTON
918-396-2747
2ND DISTRICT, SKIATOOK
DARREN MCKINNEY
918-642-5217
3RD DISTRICT, FAIRFAX

RESOLUTION #19968

At the regularly scheduled meeting of the Board of County Commissioners of Osage County On May 26th, 2015, at 10:00 AM, the following resolution was read, passed and signed:

WHEREAS, the Bridge carrying County Road NS3768 over the Caney River in Osage County, Oklahoma (ODOT Structure #57N3798E0010006; NBI:10963); STP-257C(042)CI, J/P 30499 is eligible for the National Register of Historic Places and will be replaced by constructing a new bridge on a new location; and

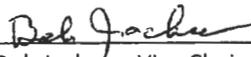
WHEREAS, the County will maintain the historic bridge in place in its current condition unless and until the bridge becomes a safety issue, is in danger of collapse, or constitutes a concern for other environmental issues. If the County determines the bridge poses such a threat, the County must notify the Department of this fact and provide adequate documentation of the problems for which the bridge requires removal. At such time, if the County had not identified an appropriate local entity or party to relocate and assume ownership of the bridge, the County agrees to inclusion of the bridge in the Department's Statewide Historic Bridge Marketing Program for a minimum period of 90 days. If no interested parties are identified through this process the County may then proceed to remove the bridge.

NOW THEREFORE BE IT RESOLVED, that the Board of County Commissioners of Osage County will retain the bridge in place and allow public pedestrian access. The bridge will be closed to vehicular traffic and the approaches appropriately barricaded.

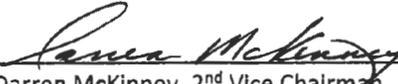
Approved and Signed this 26th day of May, 2015



Scott Hilton, Chairman of the Board



Bob Jackson, Vice Chairman



Darren McKinney, 2nd Vice Chairman

ATTEST:



Shelia Bellamy, County Clerk